

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF CITY OF DES MOINES, IOWA**

The City of Des Moines, Iowa files these comments in response to the Notice of Inquiry ("NOI"), released April, 7, 2011, in the above entitled proceeding. The City seeks to provide the Commission with information regarding Des Moines' local right-of-way and facility management practices and charges. This is a matter of concern to the City of Des Moines in order to provide for the health, safety and well being of its citizens, as well as to ensure the structural integrity of streets and the use of rights of way. The City of Des Moines provides these comments to show that the City manages its property to balance these concerns along with encouraging deployment of broadband networks. There is no evidence that Des Moines' policies with respect to placement of facilities in the rights-of-way have discouraged broadband deployment. Des Moines has successfully worked with numerous broadband providers to license and permit installation of their facilities in our rights of way, and desires additional broadband deployment expansion and choices for our citizens. Des Moines has adopted a Right of Way ordinance to provide an even playing field for all right of way users which wish to locate facilities in city right of way.

Des Moines is concerned that there are entities out there that would prefer there were no local rules and regulations regulating the localities' right of way and would prefer to place facilities wherever they please in public right of way without regard for other facilities and users of the Right of Way. (See Attachment in which a gas line was bored through a brick sewer in our right of way). Des Moines' has an interest in maintaining the structural integrity of its streets and the right of way and ensuring what is above or below its right of way is placed appropriately with evaluation of the needs of all users of the right of way. The Commission should not interfere with our local regulations, as the City of Des Moines is in the best position to balance the need to provide and maintain the right of way for the purpose of pedestrian and vehicular passage, the city's provision of essential public safety services, including police, fire, and emergency medical response services; and public health services, including sanitary sewer, water and storm drainage

services with that of installation of facilities for delivery of goods and services to Des Moines citizens for private gain.

In response to the Notice of Inquiry, Des Moines provides the following information:

#### **I. Regulations, Forms and Access.**

The City's requirements for Right of Way Occupancy are set out in , Article IX of Chapter 102 of the Municipal Code of the City of Des Moines which are found online at <http://library.municode.com/index.aspx?clientID=13242&stateID=15&statename=Iowa>. In addition most of the permit applications are on line on the City's website and easily accessible by contractors and providers of services. There is no evidence that the City's Right of Way ordinance hinders or delays access to Des Moines' right of way. There are currently approximately thirteen (13) providers of broadband service in Des Moines and Des Moines has received no complaints that broadband deployment or any other service wanting to locate in City right of way is being hindered by the City's right of way ordinance.

#### **II. Permitting Charges.**

The City has a Right of Way Management ordinance which was adopted several years ago. The ordinance requires all entities who seek to occupy or use the right of way or seek to have equipment located in the right of way to register with the city and to obtain the appropriate right of way permit, license or franchise as set forth in the ordinance. The ordinance requires city utilities and enterprises which occupy and use right of way for the provision of municipal utility and enterprise services be required to register and pay an annual management fee and obtain and pay for right of way permits to excavate in or obstruct the right of way. Entities that have a franchise from the city for the provision of a utility service are required to register and pay an annual management fee, obtain right of way permits and pay right of way permit fees to excavate in or obstruct the right of way. However, if the entities franchise provides for the payment of a franchise fee, the franchisee is not required to pay the annual management fee or permit fees. Governmental entities or agencies of the federal government, the state, or the county which occupy and use right of way for the provision of communications or utility services for governmental purposes are required to comply with the registration requirements of this division.

The City's Right of Way ordinance applies to city utilities, federal and state entities or agencies as well as private entities and provides a level playing field for all users. The fees paid by the users of the right of way are used for the purpose of the city to recoup the costs imposed upon the city attributable to such use. The City does not profit from its regulation of the Right of Way.

#### **III. CONCLUSION**

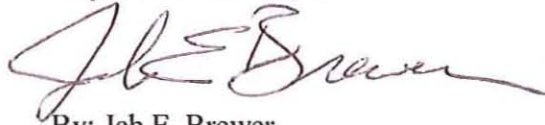
The objectives of Des Moines in regulating the right of way is to balance the need to maintain and manage the right of way on one side while still allowing installation and development of facilities for delivery of goods and services to Des Moines' citizens. There must be local regulation to ensure that there is order in the right of way and that there is control of how



facilities are placed and located in City right of way that takes into consideration other users needs and the needs of maintaining the structural integrity and viability of the right of way as well as the health, safety and welfare of the citizens who depend on that right of way to provide access for vital public services. This is best handled by the local governments who own the right of way and have obligations to the citizens using and depending upon the right of way and who ultimately pay for the maintenance and repair of that right of way. It is the position of Des Moines that the local communities as owners of the right of way are the appropriate regulator of local right of way management and placement of facilities in the right of way. The right of ways are highly confined and congested areas that require engineering and technical expertise familiar with the engineering needs, environment and historical conditions, traffic congestion and other community concerns. Regulation of charges for the use of rights of way would have significant impacts on the City as the City is only recovering its costs now with the charges. The City of Des Moines urges the Commission to leave right of way management to the communities who own and pay for that right of way.

Respectfully submitted,

City of Des Moines, Iowa

A handwritten signature in dark ink, appearing to read "Jeb E. Brewer", is written over the typed name.

By: Jeb E. Brewer  
City Engineer

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